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Attorneys for Respondents

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

BENJAMIN PAUL DE AYORA, an individual, on behalf of himself, the general public, and those similarly situated,

Case No. 3:25-cv-03645-AGT

**JOINT STATEMENT PURSUANT TO
DKT. NO. 29**

Petitioner,

Hon. Alex G. Tse

V.

INSPIRE BRANDS, INC. AND ARBY'S RESTAURANT GROUP, INC.,

Respondents.

1 Petitioner Benjamin de Ayora's ("Petitioner") and Respondents Inspire Brands, Inc. and
 2 Arby's Restaurant Group, Inc. (collectively, "Respondents," and together with Petitioner, the
 3 "Parties") met and conferred on July 14, 2025 in accordance with this Court's Order dated July 11,
 4 2025 (ECF 29). Below are the Parties respective statements as to the questions presented by the
 5 Court:

6 **I. PETITIONER'S STATEMENT**

7 This dispute arises out of Petitioner's visits to various websites that Respondents own and
 8 operate, including arbys.com and www.dunkindonuts.com (the "Websites"). Petitioner alleges that
 9 the Websites "display[] a pop-up cookie consent banner to Website visitors, which expressly tells
 10 visitors that they can decline cookies." (ECF 1 at ¶ 3). However, "[u]nbeknownst to the users, and
 11 contrary to their express rejection of all such cookies, Respondent nonetheless caused cookies to be
 12 stored on the visitors' devices" and "[i]n doing so, Respondent caused the transmission of users'
 13 personal data to undisclosed third parties, contrary to Respondent's representations." (*Id.* at ¶ 4).
 14 Petitioner alleges the conduct gives rise to "violat[ions of] state statutes and [] common law duties to
 15 Petitioner and those visitors to the Websites." (*Id.* ¶ 5).

16 Petitioner originally filed an arbitration demand in JAMS to determine arbitrability. The
 17 arbitrator entered an award finding that Petitioner's claims were not subject to arbitration. (*Id.* at ¶
 18 24). Following entry of that award, Petitioner filed a Petition to Confirm the award in this Court. (*Id.*)
 19 Respondents subsequently filed a Motion to Vacate the award. (ECF 12).

20 As discussed in the Parties' stipulation, Petitioner ultimately intends to file a class action
 21 complaint ("Complaint") that will assert his claims on the merits. (ECF 27). In particular, Petitioner
 22 intends to assert claims on behalf of himself and a proposed class of similarly situated persons for:
 23 invasion of privacy, intrusion upon seclusion, wiretapping in violation of Cal. Pen. Code § 631, use
 24 of a pen register in violation of Cal. Pen. Code. § 638.51, common law fraud, unjust enrichment and
 25 trespass to chattels. The Complaint may also add new parties. Petitioner shared a draft of the
 26 proposed Complaint with counsel for the Respondents on May 29, 2025. Counsel for Respondents
 27
 28

1 would not stipulate to allow Petitioner to file it in this matter, which arguably would have dispensed
 2 with the need for the Court to determine whether or to confirm or vacate the arbitral award.¹

3 Though Petitioner does not believe that resolving the Petition to Confirm and Motion to
 4 Vacate is necessary at this juncture, but given Respondents' position below, Petitioner does not
 5 oppose proceeding with the hearing on Friday as to both motions since the Court's determination of
 6 the Petition to Confirm and the Motion to Vacate will resolve the issue of the arbitrability as to, at a
 7 minimum, Petitioner's claims. If the Court grants the Petition to Confirm, then Petitioner will proceed
 8 with filing his Complaint with the issue of arbitrability as to Petitioner resolved. If the Court vacates
 9 the arbitral award, arguably he would do the same, but Respondents will then have the option to
 10 move to compel arbitration as to Petitioner.

11 **II. RESPONDENTS' STATEMENT**

12 This case began with Petitioner filing a full Complaint and Demand for Arbitration against
 13 Inspire Brands LLC only with JAMS, which asserted fourteen statutory and common law violations
 14 stemming from a single visit to Arby's website and an alleged interaction with that website's cookie
 15 banner.

16 Inspire Brands LLC agreed to permit Petitioner to amend his Complaint once. Accordingly,
 17 on November 7, 2024, Petitioner filed an Amended Complaint and Demand for Arbitration, which
 18 substituted Inspire Brands, Inc. for Inspire Brands LLC ("Inspire") and added Arby's Restaurant
 19 Group, Inc. ("Arby's") as a named party.

20 Thereafter, Petitioner moved for a decision regarding "arbitrability" wherein despite
 21 Petitioner's initiation of the matter in arbitration, Petitioner sought a declaration that Petitioner had
 22 not formed a binding contract with Inspire (whose website Petitioner claimed never to have visited)
 23 or Arby's. Following briefing and argument, the Arbitrator issued the Order regarding the
 24 Determination of Motion re Non-Arbitrability of Claims, dated February 24, 2025 (the "Award").

25 The Arbitrator's decision, which Respondents assert exceeded the Arbitrator's jurisdiction, is
 26 the subject of Respondents' pending Motion to Vacate (ECF 12). Respondents do not believe the

27 ¹ To be clear, when Respondents state below that "Inspire Brands LLC agreed to permit Petitioner to
 28 amend his Complaint once," Respondents are referencing the arbitration demand.

1 filing of any amended complaint would moot the necessity of this Motion to Vacate. As set forth in
 2 the Motion to Vacate and Reply in support thereof (ECF 23), a motion to vacate is an appropriate
 3 mechanism through which a party can appeal an arbitration award in a court. Respondents would
 4 have and could have filed the Motion to Vacate regardless of whether a Petition or complaint was
 5 filed in this Court, and the Court should therefore proceed with considering the Motion to Vacate.

6 On June 12, 2025, Petitioner shared a draft complaint with Respondents which adds
 7 additional named plaintiffs, respondents, and websites. As related to counsel for Petitioner, if this is
 8 the complaint Petitioner seeks to file, Respondents do not consent and will respond appropriately if
and when it is filed. Petitioner's desire to file an amended complaint further demonstrates the
 10 inappropriate nature of Petitioner's initial Petition to Confirm the Arbitration Award (ECF 1).

11
 12 Date: July 14, 2025

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2 **ATTORNEY ATTESTATION**
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4 Pursuant to N.D. Cal. Civil L.R. 5-1(h)(3), I attest that the concurrence in the filing of this
5 document has been obtained from each of the other signatories shown above and that all
6 signatories have authorized placement of their electronic signature on this document.
7

Dated: July 14, 2025
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/s/*Kali Backer* _____
Kali Backer
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